



# City of Hampton, VA

## Meeting Minutes

### City Council

22 Lincoln Street  
Hampton, VA 23669  
www.hampton.gov

*Ross A. Kearney, II*  
*Will Moffett*  
*Joseph H. Spencer, II*  
*Molly Joseph Ward, Mayor*

*Christopher G. Stuart*  
*Donnie R. Tuck*  
*George E. Wallace*

*Staff:*  
*Mary Bunting, City Manager*  
*Cynthia Hudson, City Attorney*  
*Katherine K. Glass, CMC, Clerk of Council*

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Wednesday, May 9, 2012      7:01 PM      Council Chambers, 8th Floor, City Hall

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#### CALL TO ORDER/ROLL CALL

#### MOLLY JOSEPH WARD PRESIDED

**PRESENT:** Ross A. Kearney, II, Will Moffett, Joseph H. Spencer, II, Christopher G. Stuart, Donnie R. Tuck, George E. Wallace

**INVOCATION** - Christopher G. Stuart

#### PLEDGE OF ALLEGIANCE TO FLAG

#### MAYOR'S COMMENTS

Mayor Ward welcomed everyone to the evening meeting.

Mayor Ward entertained a motion from Councilman Moffett to move to defer item #31 regarding the taxicab ordinance.

Councilman Moffett moved to defer item #31 to the June meeting for the purpose of receiving additional community input on the topic.

**DEFERRED (6/13/2012)**

**Motion made by:** Councilmember Will Moffett

**Seconded by:** Councilmember Joseph H. Spencer, II

**Ayes:** 7 - Ross A. Kearney, II, Will Moffett, Joseph H. Spencer, II, Christopher G. Stuart, Donnie R. Tuck, George E. Wallace, Molly Joseph Ward

**Nays:** 0

Mayor Ward noted Council will not vote on the one cent real estate tax increase because the City Manager, School Superintendent and School Board reached an alternative means to fund the \$1 million needed to balance the School system's budget.

Ms. Bunting acknowledged School Board members Ms. Martha Mugler, Mr. Joe Kilgore, Mr. Dave Pearson, staff member Mr. Victor Hellman and School Superintendent Dr. Linda Shifflette who were in attendance.

Ms. Bunting described the alternative solution given during the Public Comment Period for those who did not have an opportunity to hear the explanation. We advertised for a one cent dedicated tax increase requested by the School Board to provide additional funding for their operations; however, we also worked on alternatives to avoid a tax rate increase. We focused on possible one-time funding in their budget particularly since we have Fund Balance, our savings account, in excess of our policy. Our policy, as an AA plus bond rated community, is to have at least 10% of the total City and school funds in a reserve account for emergencies, unanticipated needs and cash flow. Because there is more than the 10% in our Fund Balance we thought it would be possible to put forward a Fund Balance recommendation but only if there were one-time funding needs in the School system budget.

Ms. Bunting continued stating we identified approximately \$900,000 in Fund Balance and one-time expenses that were appropriate to match against one another. The Bridgeport Academy and other school choice programs will be relocating to the Lee Elementary School. Once the last payment is made on the Bridgeport Academy lease, recurring savings will be generated. If we pay the last Bridgeport Academy lease payment with Fund Balance, the School system will receive the recurring savings immediately allowing them to put that recurring savings toward various needs including cafeteria monitors and instructional supplies. Another priority identified as having one-time funding was the transportation for Jones and Cooper Schools. She explained this could be considered a recurring expense; however, she felt comfortable articulating to Bond Rating agencies, auditors and others a Fund Balance use if everyone was in agreement that we would cease transportation at the end of the 2012-2013 school year. This will give parents a year to make alternative arrangements. These alternatives total approximately \$900,000, and therefore, the School Board agreed not to proceed with the tax increase hearing or rate increase.

### **CONSENT AGENDA**

The Clerk of Council Ms. Katherine Glass read the protocol for the consent agenda.

Mayor Ward noted Councilman Tuck requested item three be pulled from the agenda, and therefore, called for the motion for items one, two, four, five and six.

### **Consent Items**

1. 12-0157 Resolution to Accept and Appropriate the 2012 Four-for-Life Aid to Locality Funds in the Amount of \$111,083.96 from the Commonwealth of Virginia--Office of Emergency Medical Services to Hampton Fire & Rescue.

**WHEREAS**, Section 46.2-694 of the Code of Virginia establishes a Four-for-Life Fund; and

**WHEREAS**, cities, counties, and towns providing emergency medical services to their citizens receive allocations from the aid to locality funds; and

**WHEREAS**, the funds will be used for training of volunteer and career EMS personnel and for purchasing necessary EMS equipment and medical supplies for licensed, nonprofit EMS agencies.

**NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF HAMPTON, VIRGINIA:** that the 2012 Aid to Localities Four-for-Life funds in the amount of \$111,083.96 be approved and appropriated for Hampton Fire & Rescue.

APPROVED items 1, 2, and 4 through 6.

**Motion made by:** Councilmember Ross A. Kearney, II

**Seconded by:** Councilmember Christopher G. Stuart

**Ayes:** 7 - Ross A. Kearney, II, Will Moffett, Joseph H. Spencer, II, Christopher G. Stuart, Donnie R. Tuck, George E. Wallace, Molly Joseph Ward

**Nays:** 0

2. 12-0158 Resolution to Accept and Appropriate a Virginia Department of Fire Programs Training Mini Grant to Purchase Materials to Build a Roof Ventilation and Trench Cut Prop for Hampton Division of Fire & Rescue's Training Group.

**WHEREAS**, the Commonwealth of Virginia—Department of Fire Programs has awarded a Training Mini Grant to the City of Hampton Division of Fire and Rescue in the amount of \$2,197 for the purchase of materials to build a roof ventilation and trench cut prop; and,

**WHEREAS**, the grant period is from March 1, 2012 to February 28, 2013; and,

**NOW, THEREFORE, BE IT RESOLVED THAT THE COUNCIL OF THE CITY OF HAMPTON, VIRGINIA** accepts and appropriates the VDFP Training Mini Grant in the amount of \$2,197 in accordance with the grant agreement.

APPROVED items 1, 2, and 4 through 6.

**Motion made by:** Councilmember Ross A. Kearney, II

**Seconded by:** Councilmember Christopher G. Stuart

**Ayes:** 7 - Ross A. Kearney, II, Will Moffett, Joseph H. Spencer, II, Christopher G. Stuart, Donnie R. Tuck, George E. Wallace, Molly Joseph Ward

**Nays:** 0

3. 12-0159 Resolution Approving the City of Hampton, Virginia's Participation and Appropriation of Funds for the 2012 Summer Food Service Program for Children Received from the U.S. Department of Agriculture

**WHEREAS**, the City of Hampton has applied for the USDA Summer Food Service Program for Children grant from the U. S. Department of Agriculture for \$203,550 in federal funds; and

**WHEREAS**, participation in the Summer Food Program fluctuates, either decreasing or increasing the final award amount; and

**WHEREAS**, the grant application covers the period June 18, 2012 through August 24, 2012;

**NOW, THEREFORE, BE IT RESOLVED** that the City Council of the City of Hampton accepts and appropriates the USDA Summer Food Service Program for Children grant in the amount of \$203,550 and any related supplemental funding made by the U. S. Department of Agriculture in accordance with the grant agreement.

**BE IT FURTHER RESOLVED** that the City Council authorizes the City Manager to take the necessary steps to implement this grant award.

Councilman Tuck noted he may have a conflict with item number three, and therefore, would abstain from the vote.

APPROVED - this item was removed at the request of Councilman Tuck who indicated that he may have a conflict on this item.

**Motion made by:** Councilmember Joseph H. Spencer, II

**Seconded by:** Councilmember Christopher G. Stuart

**Ayes:** 6 - Ross A. Kearney, II, Will Moffett, Joseph H. Spencer, II, Christopher G. Stuart, George E. Wallace, Molly Joseph Ward

**Nays:** 0

**Abstain:** 1 - Donnie R. Tuck

4. 12-0160 Resolution designating Cherry, Bekaert & Holland, LLP as the Independent Auditor of the City of Hampton, Virginia for the fiscal years ending June 30, 2012, 2013 and 2014 with an option to extend contractually through 2016, and authorizing the City Manager to execute a contract with Cherry, Bekaert & Holland, LLP.

**WHEREAS**, the audit contract with Cherry Bekaert & Holland, LLP expired with the completion of the audit for the fiscal year ended June 30, 2011; and

**WHEREAS**, the City Manager appointed a committee to review the responses to a Request for Proposal for auditing services; and

**WHEREAS**, the committee interviewed the respondents and determined Cherry, Bekaert & Holland, LLP to be the most qualified firm and a fee for services for the audit for the fiscal year ending June 30, 2012 has been mutually agreed upon.

**NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF HAMPTON, VIRGINIA** that it appoints Cherry, Bekaert & Holland, LLP as the Independent Auditors for the City of Hampton, Virginia for the fiscal years ending June 30, 2012, 2013 and 2014 with an option to extend contractually through 2016.

**BE IT FURTHER RESOLVED BY THE COUNCIL OF THE CITY OF HAMPTON, VIRGINIA** that it hereby authorizes the City Manager to execute a contract with Cherry, Bekaert & Holland, LLP for these purposes.

APPROVED items 1, 2, and 4 through 6.

**Motion made by:** Councilmember Ross A. Kearney, II

**Seconded by:** Councilmember Christopher G. Stuart

**Ayes:** 7 - Ross A. Kearney, II, Will Moffett, Joseph H. Spencer, II,  
Christopher G. Stuart, Donnie R. Tuck, George E. Wallace, Molly  
Joseph Ward

**Nays:** 0

5. 12-0162 Resolution to Accept and Appropriate Funding Awarded to the City of Hampton, Division of Fire & Rescue from the Office of Emergency Medical Services--EMS Training Equipment Special Initiative Grant for Accredited ALS Training Programs

**WHEREAS**, the Office of Emergency Medical Services (OEMS) announced that Hampton Division of Fire & Rescue (HDFR) was awarded the EMS Training Equipment Special Initiative Grant for Accredited ALS Training Programs in the amount of \$102,865.49; and,

**WHEREAS**, HDFR is an accredited ALS Training Program; and,

**WHEREAS**, the grant period is from April 19, 2012 to October 31, 2012; and,

**NOW, THEREFORE, BE IT RESOLVED THAT THE COUNCIL OF THE CITY OF HAMPTON, VIRGINIA** accepts and appropriates the OEMS award from the EMS Training Equipment Special Initiative Grant for Accredited ALS Training Programs in the amount of \$102,865.49 in accordance with the grant agreement.

APPROVED items 1, 2, and 4 through 6.

**Motion made by:** Councilmember Ross A. Kearney, II

**Seconded by:** Councilmember Christopher G. Stuart

**Ayes:** 7 - Ross A. Kearney, II, Will Moffett, Joseph H. Spencer, II,  
Christopher G. Stuart, Donnie R. Tuck, George E. Wallace, Molly  
Joseph Ward

**Nays:** 0

6. 12-0199 Approval of the minutes from the afternoon session of June 8, 2011; the afternoon and public comment sessions of March 28, 2012; the afternoon, public comment and evening sessions of April 11, 2012; and the public comment period of April 25, 2012.

APPROVED items 1, 2, and 4 through 6.

**Motion made by:** Councilmember Ross A. Kearney, II

**Seconded by:** Councilmember Christopher G. Stuart

**Ayes:** 7 - Ross A. Kearney, II, Will Moffett, Joseph H. Spencer, II,  
Christopher G. Stuart, Donnie R. Tuck, George E. Wallace, Molly  
Joseph Ward

**Nays:** 0

**THERE WERE NO PRESENTATIONS, PROCLAMATIONS OR AWARDS**

**PUBLIC HEARINGS**

Ms. Glass read the protocol for the Public Hearing items.

Ms. Bunting gave an introduction regarding tonight's Public Hearing. Tonight's meeting is a regular meeting of the Council. Among other items of business, the agenda includes a final opportunity for citizen comment on the FY13 budget and tax rates and Council's final vote on the budget and appropriation Ordinances. The agenda included a Public Hearing on the proposed one cent real estate tax increase that would have been dedicated to the schools; however, that measure is no longer necessary for consideration due to the resolution previously described. Council was briefed on proposed changes to the budget as a result of State budget impacts. We had anticipated a more severe loss of State revenue; however, when we received the State budget, we learned the cuts we made were deeper than they needed to be. Therefore, we made recommendations to Council to restore funding to various City services that had been cut in the budget recommendation as well as to lower the proposed cigarette tax increase.

Ms. Bunting stated the areas in the budget that were restored due to the changes in the State revenue are Community Center hours, library hours, history museum hours, various landscape and grounds maintenance, a custodian position, youth and family oriented programs, the Police Division, 911 part-time salaries and information technology needs.

Ms. Bunting stated as part of the amendments brought before Council this evening, we will need to make an adjustment in our revenue and expense side for changes in the Community Development Authority (CDA) special assessment for Peninsula Town Center. The CDA sets a special assessment each year for the Peninsula Town Center based upon the difference between what is needed for the CDA debt service payment and what is generated in incremental taxes, special taxes and user fees at the Town Center. Any differential is assigned as a CDA special assessment and is passed on to the real estate property tax owners in that CDA. The CDA assessment went down this year which means the incremental revenues and user charges are covering a greater portion of the debt service payment. The CDA special assessment did not get approved until after the release of the City Manager's budget. We are the pass through agent for that. The Treasurer's office receives those, puts them in a lock box and we disperse them to the agent at the right time. We need to make a reduction in what we receive for the Peninsula Town Center CDA assessment which is offset with a change in the appropriation.

Ms. Bunting stated Council will see changes related to the School system with an increase in transfer from Fund Balance. We split that between Committed Fund Balance using the remainder of our departmental savings account as well as Unassigned Fund Balance to achieve the \$900,000 discussed earlier. You will also see increases in revenue due to the additional School State funds received when the General Assembly budget was adopted.

Ms. Bunting noted everything will be detailed for Council in the amendments they will read tonight. Traditionally, even though we had to make decisions about those changes, we allow the public to speak. Once we have concluded that, staff will work Council through the budget Ordinances that need to be adopted to finalize the budget. The

Ordinances have been prepared with the changes described so that we can have them in proper legal form.

Councilman Spencer asked Ms. Bunting to elaborate on fee increases and new fees included in the proposed Manager's Budget, such as the stormwater, sewer and fire inspection fees.

Ms. Bunting addressed the stormwater user fee, the legal vehicle the Commonwealth gives localities for dealing with the Environmental Protection Agency's (EPA) water quality management guidelines which come from the Federal government through the EPA. The State Department of Environmental Quality (DEQ) monitors our performance as well as other localities over a certain size in the Hampton Roads region. The revenues go into a special revenue account, and anything we collect from the stormwater management fee can only be used to address water quality purposes that meet the EPA guidelines. The rate is increasing because there are new requirements from the EPA which the DEQ implements called the Total Maximum Daily Load (TMDL), a pollution diet for the Chesapeake Bay, with a goal of reducing the level of contaminants in stormwater runoff to obtain a healthier Chesapeake Bay. These are expensive requirements which all localities must meet; therefore, we must begin to take certain action steps. Ms. Bunting commended staff and the citizen Waterways Committee for reviewing the TMDL issue to determine how we might tie water quality needs as well as water quantity and concerns the public raised because of the sea level rise. The stormwater fee money for TMDL will accomplish several of the waterway recommendations.

At Councilman Spencer's request, Ms. Bunting highlighted the Waterways Committee recommendations. Initiate Watershed studies to ensure we are aware of the water quality management needed without causing a water quantity problem elsewhere. Once the study is complete, we have money for the implementation of the study's findings, and are required to adopt the best management practices plan, a technical document that meets the phase II Water Improvement Plan (WIP) which is consistent with the two year milestone requirements for the TMDL. We can apply Light Detection and Ranging (LIDAR) data, digital measurements of water impacts in the community, to drive program prioritization. We have the support of the Regional Sediment Management Plan and the study of developmental rights and/or purchase of development rights to promote the creation and preservation of natural areas. Stormwater management funds are also being used to hire an experienced grant writer to help us tap into potential foundation types of funds. We also have other recurring expenses related to educating the public on steps they can take to minimize the negative nutrients getting into the waterways.

Ms. Bunting addressed the sewer user fees. The base sewer user fee is for maintaining sewer lines. The City is responsible for transporting wastewater from the home to Hampton Roads Sanitation District (HRSD) stations which transfers the wastewater to plants for treatment. There is also a surcharge dedicated specifically to deal with EPA and DEQ consent order requirements that all Hampton Roads localities and HRSD are under. This results from the need to address sanitary overflows that occur in large rain events and general aging of the infrastructure. The user fee increase goes solely to implement the consent order requirements.

Ms. Bunting addressed fire inspection fees stating fire inspection fees are used in virtually every other urban locality in Hampton Roads and are the cost of doing business

in other localities. Businesses that have offices in more than one locality, Hampton and Newport News, for example, already pay the fee in the other locality (Newport News); however, traditionally, we have not charged these fees. There are major equipment needs for our Fire and Rescue Department; and although we depreciate our vehicles and ambulances, the cost of replacing them is much higher than the funds we have set aside. The funds from this fee have been dedicated exclusively to the Fire Department budget for upgrading capital equipment. This is new to Hampton, but not the region and the money is dedicated to Fire and Rescue.

Councilman Spencer thanked Ms. Bunting and Mayor Ward for allowing him to request those explanations because, in his opinion, it is important for citizens to understand why we have increased and instituted certain fees.

### **Fiscal Year Budget Hearings**

7. 12-0196 Public Hearing to Receive Citizens' Comments Relative to the Proposed Real Estate Property Tax Rate of \$1.05 per \$100 of Assessed Value

Mayor Ward noted according to the City Manager's previous explanation, this item is no longer necessary to be discussed or reviewed.

COUNCIL invited individuals to speak but this public hearing became unnecessary due to a compromise reached on funding for Hampton City Schools which makes the proposed real estate tax increase no longer necessary.

8. 12-0195 Public Hearing to Receive Citizens' Comments Relative to the:
- Fiscal Year 2013 General Fund
  - Capital Improvement Fund
  - Solid Waste Management Fund
  - Stormwater Management Fund
  - Wastewater Management Fund
  - Fleet Services Fund
  - Risk Management Fund
  - Hampton Coliseum Fund
  - Hampton Roads Convention Center Fund
  - Proposed Real Estate Property Tax rate of \$1.04 per \$100 of Assessed Value
  - Proposed Personal Property Tax Rate
  - Fiscal Year 2013 Proposed Cigarette Tax Rate Increase
  - Proposed Meals Tax Increase
  - Information Technology Fund
  - The Hamptons Golf Course budget
  - The Woodlands Golf Course budget
  - Economic Development Fund
  - Proposed Commercial Fire Code Inspection and Fire Code Operational Permits Fee
  - Proposed Residential and Commercial Stormwater Fee Increases
  - Proposed Local Vehicle License Fee Increase
  - Proposed Sewer User Surcharge Increase, and
  - Proposed Increase to Permit and Inspection Fees.



Mr. Alan Bourne, 22 Lynnhaven Drive, congratulated Mayor Ward and Vice Mayor Wallace on their re-elections and stated the re-elections proved Hampton wants a positive voice in its government. He added, when Councilman Moffett runs for re-election, we will vote for his positive voice.

Mr. Bourne made the following statement: I hate cigarette smoking and think that most non-cigarette smokers do. Its dirty, they blow it (smoke) in my face, they chuck their cigarette butts around, they run our medical costs way up and use our medical resources. In college, I did a paper in Economics. The supply and demand curve did not fit on cigarettes. The addicts will go get the cigarettes no matter what. Charge them \$100 per pack; they will find the \$100. The problem is they can go to York County to get them cheaper. The first thing we need to do (I don't know how to do it) is approach the State of Virginia to get a level playing field. Allow the counties to levy a cigarette tax. Then, let's raise it. Right now, I don't think we are stopping anybody from smoking; we are just stopping them from paying cigarette taxes in Hampton. When we do that, they go to York County to buy gas, hot dogs, candy bars and coffee. Our local merchants were paying taxes to the City of Hampton, but will now not only lose the cigarette tax for the City, the sales tax for the City, but also their personal income tax and the money they will spend here in Hampton will be lost. My suggestion is we hold off on raising the cigarette tax until we can get a level playing field. Thank you.

Ms. Sheri Acharya, 344 Brout Drive, made the following statement: My husband and I own a small business in Hampton. We live in Hampton. We are trying to raise our family here. We moved here from Chicago trying to find a better opportunity to raise a family. Everybody knows we have a higher cost compared to the other counties and it makes it hard for us because when looking at our sales, we have a high margin of cigarette sales. It doesn't matter how much we try to sell other items to make up the profit we lose from cigarettes, it just doesn't happen. I am a housewife. I have a four year old. My husband works twelve hours a day to try to take care of all of the bills. With the cost going up, it is hard for us to pay the store bills; forget about making any money to run the household. I want to see my husband home. My son wants to see him. With him working twelve hours, I don't expect him to work sixteen hours and we not see him at all. I would really appreciate it if you would consider not raising the taxes.

Mr. Romy Singh, 35 Michigan Drive, made the following statement: I am here on behalf of several convenience stores located in Hampton. I am a resident of Hampton. I know the City has to balance the budget and the cigarette tax is a very easy pick. As Mr. Alan (Bourne) said, it is very problematic compared to other counties, such as Yorktown. We lose a lot of revenue. Whenever the City raises taxes, it does not only hit the consumer. All of the convenience stores match prices so that they do not lose sales. We lose our profit. We lose ten cents of tax. Our gross margin is 8% on cigarettes versus York County retailers that make more than a 14% or 15% gross profit margin. Any increase in taxes is not going to the consumer. It is hitting the retailer who is running the convenience store. This is the time to protect the small businesses which are located in Hampton. It is the City's job to protect us. Thank you.

Mr. Paul Desai, 111 Stapleford Way, made the following statement: I live in Hampton and own a business in Hampton. As far as what the other people have just said about the cigarette tax – I am here for that too. It used to be "another day, another dollar", but my concern in this economy is that it is now a quarter. If people are not buying here, they are going to buy outside (the City) where they will find it cheaper. We are losing

revenue too. We are paying taxes on every \$100. It will affect the overall budget. If you look at the big picture, you will see the puzzle. My business sells 20% cigarettes, so I am going to lose big time. Other stores are selling 30%; some are selling 40% cigarettes. I am from New Jersey. New York has more taxes on cigarettes, so people come to New Jersey. When you compare New Jersey to Pennsylvania, Pennsylvania makes more money because the residents on the border of New Jersey go to Pennsylvania to buy cigarettes. Hampton is the better place for business people and that is why I am here. Thank you.

Mr. Kiran Patel, 2610 Cunningham Drive, made the following statement: I just moved to the City of Hampton and bought a small business here. I am already hearing from my customers that if they go across the way (another City), you can get a cheaper rate on cigarettes. We are increasing cigarette taxes again. Small businesses are losing business and the City is losing because less business means less tax for the City. On both hands, we are losing. Thank you.

Mayor Ward called for additional speakers. There were two additional speakers.

Mr. Edwin Boone, 48 Snow Street, made the following statement: I came to the business meeting today (the afternoon session) and the City Council answer to your cigarette (tax increase) is that the gas is so high that people will not go to Yorktown, so take it or leave it.

Mr. Rasid Patel, no address given, made the following statement: I own several gas stations and convenience stores in the area, particularly in Hampton. As far as the cigarette tax is concerned, compared to other cities in Hampton Roads, such as Virginia Beach, Norfolk and Suffolk, Hampton is the highest in the area. We are paying \$7.50 per carton whereas Virginia Beach pays approximately \$5. That is already higher than other localities and if you consider raising the amount to \$8.50 per carton, people are going to go to Yorktown, Poquoson or some other area to buy cigarettes that are cheaper than the ones in Hampton. We are losing revenue already. Tobacco outlet stores are opening and selling pipe tobacco cigarette cartons for \$22, yet the City is not making any money off of that. The City needs to go after retail stores who are selling cigarettes using pipe tobacco because the City is not benefitting tax wise because people are paying \$20 for them versus \$50 for Newport Cigarettes. The City is already losing millions of dollars per year. These tobacco outlets are popping up everywhere in Hampton. My advice is not to raise the cigarette tax in Hampton because we are already paying higher than other localities. This is my concern. Thank you.

Mayor Ward called for additional speakers. As there were no additional speakers, she closed the Public Hearing.

HELD PUBLIC HEARING - there were seven speakers on the budget and they spoke in opposition to an increase in the cigarette tax.

## **GENERAL ITEMS**

Mayor Ward noted Councilman Stuart requested item numbers 17, 20 and 21 be read separately and Councilman Tuck requested item number 26 be read separately.

**Budget Ordinances Requiring Two Readings (May 2 and May 9, 2012)**

9. 12-0173 An Ordinance to Adopt a Budget and Appropriate Monies for the General Expenses of the City of Hampton, Virginia for the Fiscal Year Beginning July 1, 2012 and Ending June 30, 2013.

Councilman Tuck stated he disagrees with the funding for the cigarette and fire inspection fees, and therefore, will vote no.

City Attorney Hudson clarified that the first motion is to amend the General Fund Budget and appropriations to be followed by a motion to adopt the General Fund budget and appropriations as amended.

MOVED TO amend the City's Fiscal Year 2013 Operating Budget and an ordinance appropriating monies for the General Expenses of the City, adopted on first reading, as indicated on the itemization read by the Clerk which is attached.

**Motion made by:** Councilmember Ross A. Kearney, II

**Seconded by:** Councilmember Joseph H. Spencer, II

**Ayes:** 7 - Ross A. Kearney, II, Will Moffett, Joseph H. Spencer, II, Christopher G. Stuart, Donnie R. Tuck, George E. Wallace, Molly Joseph Ward

**Nays:** 0

ADOPTED ON SECOND AND FINAL READING AS AMENDED

**Motion made by:** Councilmember Ross A. Kearney, II

**Seconded by:** Councilmember Joseph H. Spencer, II

**Aye:** 6 - Ross A. Kearney, II, Will Moffett, Joseph H. Spencer, II, Christopher G. Stuart, George E. Wallace, Molly Joseph Ward

**Nay:** 1 - Donnie R. Tuck

10. 12-0174 An Ordinance to Adopt a Budget and Appropriate Monies for the Capital Budget for the City of Hampton, Virginia for the Fiscal Year Beginning July 1, 2012 and Ending June 30, 2013.

ADOPTED ON SECOND AND FINAL READING - agenda items 10 through 16, 18 and 19 were considered in one motion.

**Motion made by:** Councilmember Joseph H. Spencer, II

**Seconded by:** Councilmember Ross A. Kearney, II

**Ayes:** 7 - Ross A. Kearney, II, Will Moffett, Joseph H. Spencer, II, Christopher G. Stuart, Donnie R. Tuck, George E. Wallace, Molly Joseph Ward

**Nays:** 0

11. 12-0175 An Ordinance to Adopt a Budget and Appropriate Monies for the General Expenses of the Solid Waste Management Fund for the Fiscal Year beginning July 1, 2012 and ending June 30, 2013.

ADOPTED ON SECOND AND FINAL READING - agenda items

10 through 16, 18 and 19 were considered in one motion.

**Motion made by:** Councilmember Joseph H. Spencer, II

**Seconded by:** Councilmember Ross A. Kearney, II

**Ayes:** 7 - Ross A. Kearney, II, Will Moffett, Joseph H. Spencer, II,  
Christopher G. Stuart, Donnie R. Tuck, George E. Wallace, Molly  
Joseph Ward

**Nays:** 0

12. 12-0176 An Ordinance to Adopt a Budget and Appropriate Monies for the General Expenses of the Stormwater Management Fund for the City of Hampton, Virginia, for the Fiscal Year Beginning July 1, 2012 and Ending June 30, 2013.

ADOPTED ON SECOND AND FINAL READING - agenda items

10 through 16, 18 and 19 were considered in one motion.

**Motion made by:** Councilmember Joseph H. Spencer, II

**Seconded by:** Councilmember Ross A. Kearney, II

**Ayes:** 7 - Ross A. Kearney, II, Will Moffett, Joseph H. Spencer, II,  
Christopher G. Stuart, Donnie R. Tuck, George E. Wallace, Molly  
Joseph Ward

**Nays:** 0

13. 12-0177 An Ordinance to Adopt a Budget and Appropriate Monies for the General Expenses of the Wastewater Management Fund for the City of Hampton, Virginia for the Fiscal Year Beginning July 1, 2012 and ending June 30, 2013.

ADOPTED ON SECOND AND FINAL READING - agenda items

10 through 16, 18 and 19 were considered in one motion.

**Motion made by:** Councilmember Joseph H. Spencer, II

**Seconded by:** Councilmember Ross A. Kearney, II

**Ayes:** 7 - Ross A. Kearney, II, Will Moffett, Joseph H. Spencer, II,  
Christopher G. Stuart, Donnie R. Tuck, George E. Wallace, Molly  
Joseph Ward

**Nays:** 0

14. 12-0178 An Ordinance to Adopt a Budget and Appropriate Monies for the General Expenses of the Fleet Services Fund for the City of Hampton, Virginia, for the Fiscal Year Beginning July 1, 2012 and Ending June 30, 2013.

ADOPTED ON SECOND AND FINAL READING - agenda items

10 through 16, 18 and 19 were considered in one motion.

**Motion made by:** Councilmember Joseph H. Spencer, II

**Seconded by:** Councilmember Ross A. Kearney, II

**Ayes:** 7 - Ross A. Kearney, II, Will Moffett, Joseph H. Spencer, II,  
Christopher G. Stuart, Donnie R. Tuck, George E. Wallace, Molly  
Joseph Ward

**Nays:** 0

15. 12-0180 An Ordinance to Adopt a Budget and Appropriate Monies for the General Expenses of the Risk Management Fund for the City of Hampton,

Virginia, for the Fiscal Year Beginning July 1, 2012 and Ending June 30, 2013.

ADOPTED ON SECOND AND FINAL READING - agenda items 10 through 16, 18 and 19 were considered in one motion.

**Motion made by:** Councilmember Joseph H. Spencer, II

**Seconded by:** Councilmember Ross A. Kearney, II

**Ayes:** 7 - Ross A. Kearney, II, Will Moffett, Joseph H. Spencer, II, Christopher G. Stuart, Donnie R. Tuck, George E. Wallace, Molly Joseph Ward

**Nays:** 0

16. 12-0183 An ordinance to adopt a budget and appropriate monies for the general expenses of the Hampton Coliseum Fund for the fiscal year beginning July 1, 2012 and ending June 30, 2013.

ADOPTED ON SECOND AND FINAL READING - agenda items 10 through 16, 18 and 19 were considered in one motion.

**Motion made by:** Councilmember Joseph H. Spencer, II

**Seconded by:** Councilmember Ross A. Kearney, II

**Ayes:** 7 - Ross A. Kearney, II, Will Moffett, Joseph H. Spencer, II, Christopher G. Stuart, Donnie R. Tuck, George E. Wallace, Molly Joseph Ward

**Nays:** 0

17. 12-0184 An ordinance to adopt a budget and appropriate monies for the general expenses of the Hampton Roads Convention Center Fund for the fiscal year beginning July 1, 2012 and ending June 30, 2013.

Councilman Stuart noted he requested the item be removed due to a contractual relationship between his employer and this institution, and therefore, he will abstain from the vote.

ADOPTED ON SECOND AND FINAL READING - Councilman Stuart abstained from voting due to a conflict.

**Motion made by:** Councilmember Ross A. Kearney, II

**Seconded by:** Councilmember Joseph H. Spencer, II

**Ayes:** 6 - Ross A. Kearney, II, Will Moffett, Joseph H. Spencer, II, Donnie R. Tuck, George E. Wallace, Molly Joseph Ward

**Nays:** 0

**Abstain:** 1 Christopher G. Stuart

18. 12-0186 An Ordinance to Set the Tax Rate on Tangible Personal Property, Vehicles Without Motive Power (Manufactured Homes), Motor Vehicles Specially Equipped to Provide Transportation for Physically Handicapped Individuals, Machinery and Tools, Machinery and Tools Used Directly in the Manufacture of Precision Investment Castings; Boats or Watercraft Weighing Five Tons or More, Not Used Solely For Business Purposes; Boats or Watercraft Weighing Less Than Five Tons, Not Used Solely for Business Purposes; Boats or Watercraft Weighing Five Tons or More, Used for Business Purposes Only; Boats or Watercraft Weighing Less

Than Five Tons, Used For Business Purposes Only and Privately Owned Camping Trailers and Motor Homes Used For Recreational Purposes Only, and Motor Vehicles Owned Regularly Used by Disabled Veterans in the City of Hampton, Virginia for the Calendar Year Beginning January 1, 2013 and Ending on December 31, 2013.

ADOPTED ON SECOND AND FINAL READING - agenda items 10 through 16, 18 and 19 were considered in one motion.

**Motion made by:** Councilmember Joseph H. Spencer, II

**Seconded by:** Councilmember Ross A. Kearney, II

**Ayes:** 7 - Ross A. Kearney, II, Will Moffett, Joseph H. Spencer, II, Christopher G. Stuart, Donnie R. Tuck, George E. Wallace, Molly Joseph Ward

**Nays:** 0

19. 12-0187 An Ordinance to Set the Tax Rate on Real Properties in the City of Hampton, Virginia, for the Fiscal Year Beginning July 1, 2012 and Ending June 30, 2013.

ADOPTED ON SECOND AND FINAL READING - agenda items 10 through 16, 18 and 19 were considered in one motion.

**Motion made by:** Councilmember Joseph H. Spencer, II

**Seconded by:** Councilmember Ross A. Kearney, II

**Ayes:** 7 - Ross A. Kearney, II, Will Moffett, Joseph H. Spencer, II, Christopher G. Stuart, Donnie R. Tuck, George E. Wallace, Molly Joseph Ward

**Nays:** 0

20. 12-0163 An Ordinance to Amend and Re-enact Chapter 37 "Taxation", Article X "Cigarette Tax", Section 37-302 "Levied; Amount" of the Code of The City of Hampton, Virginia, to increase the tax levied and imposed upon the sale of cigarettes to forty-two and one-half (42.5) mills per cigarette (\$.85 per pack of twenty).

Councilman Moffett addressed business owners, particularly those from the Indian community with which he has engaged. He explained he could not support the ten cent cigarette tax increase because of the education the business owners provided regarding the impact it would have on their businesses. However, having to balance the needs of the City and the budget, many people encouraged Council about the importance of things in the City including public safety, police positions and recreational centers. He commended staff for cutting the tax increase in half and stated while he could not support the ten cent increase, he will support the five cent increase for the stated reasons. There are many citizens with many needs and different perspectives on the budget. He added the business owners' advocacy has made a difference and Council appreciates the fact that they appeared before them to express their concerns. He indicated he will vote yes for the five cent increase.

Vice Mayor Wallace concurred with Councilman Moffett and stated he has trepidations about having to impose the cigarette tax increase recognizing that there will be some harm which has been perceived by some business people. However, it is important to weigh conflicting values Council must adjudicate, which is not always easy. We heard

the business people and we came up with a compromise. It was said that the cost of gas may preclude people from going to York County, and there is some credence in that. In addition to that, we will now have a differential of five cents between us and the closest city aligned with us which will accrue beneficially. He added this makes his vote a little easier to cast as yes.

Mayor Ward commented she appreciated Councilman Moffett's and Vice Mayor Wallace's comments, echoed their sentiments and thanked the small business owners who appeared this evening. She reiterated we reduced the tax increase by half of what was originally considered and commended the City Manager for being able to find a way to fund the change.

MOVED TO amend an ordinance setting the tax rate on the sale of cigarettes at \$0.85 per pack of twenty, adopted on first reading, to set the tax rate on the sale of cigarettes at \$0.80 per pack of twenty on second and final reading.

**Motion made by:** Councilmember Ross A. Kearney, II

**Seconded by:** Vice Mayor George E. Wallace

**Ayes:** 5 - Ross A. Kearney, II, Will Moffett, Joseph H. Spencer, II, George E. Wallace, Molly Joseph Ward

**Nays:** 2 - Christopher G. Stuart, Donnie R. Tuck

ADOPTED ON SECOND AND FINAL READING AS AMENDED

**Motion made by:** Councilmember Joseph H. Spencer, II

**Seconded by:** Councilmember Ross A. Kearney, II

**Aye:** 5 - Ross A. Kearney, II, Will Moffett, Joseph H. Spencer, II, George E. Wallace, Molly Joseph Ward

**Nay:** 2 - Christopher G. Stuart, Donnie R. Tuck

21. 12-0164 An Ordinance to Amend and Re-enact Chapter 37 "Taxation", Article VII "Tax On Food And Beverages Sold By Food Establishments", Section 37-227 "Levied; Amount" of the Code of the City of Hampton, Virginia, to increase the tax levied and imposed upon the sale of all food and beverages sold in the city in or from a food establishment to seven and one-half (7.5) percent.

ADOPTED ON SECOND AND FINAL READING

**Motion made by:** Councilmember Will Moffett

**Seconded by:** Vice Mayor George E. Wallace

**Ayes:** 6 - Ross A. Kearney, II, Will Moffett, Joseph H. Spencer, II, Donnie R. Tuck, George E. Wallace, Molly Joseph Ward

**Nays:** 1 - Christopher G. Stuart

#### **Budget Ordinances Requiring One Reading (May 9, 2012)**

22. 12-0179 An Ordinance to Adopt a Budget and Appropriate Monies for the General Expenses of the Information Technology Fund for the City of Hampton, Virginia, for the Fiscal Year Beginning July 1, 2012 and Ending June 30, 2013.

ADOPTED ON FIRST AND FINAL READING - agenda items 22 through

25 and 27 through 30 were considered in one motion.

**Motion made by:** Councilmember Will Moffett

**Seconded by:** Vice Mayor George E. Wallace

**Ayes:** 7 - Ross A. Kearney, II, Will Moffett, Joseph H. Spencer, II,  
Christopher G. Stuart, Donnie R. Tuck, George E. Wallace, Molly  
Joseph Ward

**Nays:** 0

23. 12-0181 An Ordinance to Adopt a Budget and Appropriate Monies for the General Expenses of The Hamptons Golf Course for the Fiscal Year Beginning July 1, 2012 and ending June 30, 2013.

ADOPTED ON FIRST AND FINAL READING - agenda items 22 through 25 and 27 through 30 were considered in one motion.

**Motion made by:** Councilmember Will Moffett

**Seconded by:** Vice Mayor George E. Wallace

**Ayes:** 7 - Ross A. Kearney, II, Will Moffett, Joseph H. Spencer, II,  
Christopher G. Stuart, Donnie R. Tuck, George E. Wallace, Molly  
Joseph Ward

**Nays:** 0

24. 12-0182 An Ordinance to Adopt a Budget and Appropriate Monies for the General Expenses of The Woodlands Golf Course for the Fiscal Year Beginning July 1, 2012 and ending June 30, 2013.

ADOPTED ON FIRST AND FINAL READING - agenda items 22 through 25 and 27 through 30 were considered in one motion.

**Motion made by:** Councilmember Will Moffett

**Seconded by:** Vice Mayor George E. Wallace

**Ayes:** 7 - Ross A. Kearney, II, Will Moffett, Joseph H. Spencer, II,  
Christopher G. Stuart, Donnie R. Tuck, George E. Wallace, Molly  
Joseph Ward

**Nays:** 0

25. 12-0185 An ordinance to adopt a budget and appropriate monies for the Economic Development Fund for the Fiscal Year Beginning July 1, 2012 and Ending June 30, 2013.

ADOPTED ON FIRST AND FINAL READING - agenda items 22 through 25 and 27 through 30 were considered in one motion.

**Motion made by:** Councilmember Will Moffett

**Seconded by:** Vice Mayor George E. Wallace

**Ayes:** 7 - Ross A. Kearney, II, Will Moffett, Joseph H. Spencer, II,  
Christopher G. Stuart, Donnie R. Tuck, George E. Wallace, Molly  
Joseph Ward

**Nays:** 0

26. 12-0169 Ordinance To Amend And Reenact Chapter 14, Article II, Entitled "Fire Prevention And Protection" By Adding Thereto A New Section 14-29 Entitled "Fees For Commercial Fire Code Inspections And Fire Code Operational Permits"



Councilman Stuart stated while he is in support of the needs of the Fire Department and what they accomplish in our community, placing ¼ of a million dollar burden on small businesses is too much to bear, and therefore, he will vote no.

Councilman Tuck concurred with Councilman Stuart regarding the burden this will impose on small businesses and added, in his opinion, there are other ways of funding this, and therefore, he will vote no.

Vice Mayor Wallace commented that if there were other ways to fund this, there was ample time to present those opportunities prior to this evening. He stated our community is competitive regarding various things including tax rates and fees, and in this case, we were not being competitive compared to surrounding jurisdictions. He added some people wanted the fees charged to the user versus imposing the tax on the general populous which, in his opinion, is appropriate since the user would not be penalized anymore than if they did business in other jurisdictions, and therefore, he will vote yes.

**ADOPTED ON FIRST AND FINAL READING**

**Motion made by:** Vice Mayor George E. Wallace

**Seconded by:** Councilmember Will Moffett

**Ayes:** 4 - Will Moffett, Joseph H. Spencer, II, George E. Wallace, Molly Joseph Ward

**Nays:** 3 - Ross A. Kearney, II, Christopher G. Stuart, Donnie R. Tuck

27. 12-0170 An Ordinance to Amend and Re-enact Chapter 33.1 "Stormwater Management", Article II "Service Charges and Revenues", Section 33.1-21 "Same-Billing, Payment, Interest, Fee and Lien" of the Code of The City of Hampton, Virginia, to increase the Residential Stormwater Fee to \$6.41 per month and the Commercial Stormwater Fee to \$6.41 per 2,429 sq. ft. of impervious area.

**ADOPTED ON FIRST AND FINAL READING** - agenda items 22 through 25 and 27 through 30 were considered in one motion.

**Motion made by:** Councilmember Will Moffett

**Seconded by:** Vice Mayor George E. Wallace

**Ayes:** 7 - Ross A. Kearney, II, Will Moffett, Joseph H. Spencer, II, Christopher G. Stuart, Donnie R. Tuck, George E. Wallace, Molly Joseph Ward

**Nays:** 0

28. 12-0171 An Ordinance to Amend and Re-enact Chapter 21 "Motor Vehicles and Traffic", Article II "Local Vehicle License", Section 21-41 "Amount of Fee – Generally" of the Code of The City of Hampton, Virginia, to increase the Local Vehicle License Fee to \$35.00 for Motor Vehicles up to Two (2) Tons and \$40.00 for Motor Vehicles Over Two (2) Tons.

**ADOPTED ON FIRST AND FINAL READING** - agenda items 22 through 25 and 27 through 30 were considered in one motion.

**Motion made by:** Councilmember Will Moffett

**Seconded by:** Vice Mayor George E. Wallace

**Ayes:** 7 - Ross A. Kearney, II, Will Moffett, Joseph H. Spencer, II, Christopher G. Stuart, Donnie R. Tuck, George E. Wallace, Molly Joseph Ward

**Nays:** 0

29. 12-0172 An Ordinance to Amend and Re-enact Chapter 30 "Sewers and Sewage Disposal", Article III "Sewer Use Charges", Section 30-48 "Amount" of the City of Hampton, Virginia, to increase the sewer user surcharge to sixty-six cents (\$0.66) per 100 cu. ft. of water consumption.

ADOPTED ON FIRST AND FINAL READING - agenda items 22 through 25 and 27 through 30 were considered in one motion.

**Motion made by:** Councilmember Will Moffett

**Seconded by:** Vice Mayor George E. Wallace

**Ayes:** 7 - Ross A. Kearney, II, Will Moffett, Joseph H. Spencer, II, Christopher G. Stuart, Donnie R. Tuck, George E. Wallace, Molly Joseph Ward

**Nays:** 0

30. 12-0191 Ordinance To Amend And Reenact Chapter 9, Article II Of The Code Of The City Of Hampton Entitled "Building And Development Regulations", Article II "Building Code", Division 2 "Permit And Inspection Fees", Section 9-41 Entitled "Payment Prerequisite To Issuance Or Amendment Of Permit; No Refunds" To Increase The Fees By Ten Dollars (\$10.00)

ADOPTED ON FIRST AND FINAL READING - agenda items 22 through 25 and 27 through 30 were considered in one motion.

**Motion made by:** Councilmember Will Moffett

**Seconded by:** Vice Mayor George E. Wallace

**Ayes:** 7 - Ross A. Kearney, II, Will Moffett, Joseph H. Spencer, II, Christopher G. Stuart, Donnie R. Tuck, George E. Wallace, Molly Joseph Ward

**Nays:** 0

Mayor Ward commended Ms. Bunting and staff on doing a great job with the budget.

At Mayor Ward's request, Ms. Bunting made comments regarding those who contributed to the budget process. She stated the budget process is a labor of love for the City, citizens and operations of the City. It takes many hours to put together a budget and do community outreach while working the numbers. Obstacles such as the State not adopting its budget in a timely fashion add extra stress. She recognized the following team members who were in attendance: Budget Director Ms. Gloria Washington, Assistant City Managers Mr. James Peterson and Mr. James Gray, Special Projects Manager Mr. Brian Deprofio, Parks and Recreation Director Mr. James Wilson, Public Works Director Mr. Anthony Reyes, Public Works Deputy Director Mr. Lynn Allsbrook, Department of Human Services Director Ms. Wanda Rogers, Finance Director Mr. Karl Daughtrey, Human Resources Director Ms. Diane Bohlman, City Attorney Ms. Cynthia Hudson, Fire Chief Mr. David Layman and the entire budget staff. She added employees and department heads did a great job of suggesting ideas.

**Ordinances**

31. 12-0197 Ordinance To Amend And Reenact Chapter 38 Of The Code Of The City Of Hampton Virginia Entitled "Vehicles For Hire", Division 5 Entitled "Fares", Section 38-127, Entitled "General Rates Prescribed; Charging Different Rates" And Section 38-129 Entitled "Charge For Waiting Time" To Increase The Rate Allowed To Be Charged For The First One-Seventh Mile From \$1.75 to \$2.75, And Increase The Rate For Each Additional One-Seventh Mile From \$0.25 To \$0.30 And To Repeal Section 38-146 Of Division 7 Entitled "Fuel Surcharge" To Eliminate The \$1.00 Fuel Surcharge.

DEFERRED (6/13/2012) See Mayor's Comments.

**Motion made by:** Councilmember Will Moffett

**Seconded by:** Councilmember Joseph H. Spencer, II

**Ayes:** 7 - Ross A. Kearney, II, Will Moffett, Joseph H. Spencer, II, Christopher G. Stuart, Donnie R. Tuck, George E. Wallace, Molly Joseph Ward

**Nays:** 0

**Resolutions**

32. 12-0168 Resolution Authorizing the issuance of General Obligation Public Improvement Refunding Bonds of the City of Hampton in the maximum principal amount not to exceed \$87,000,000 to refund certain General Obligation Bonds previously issued by the City, and providing for the form, details and payment of such Bonds.

**WHEREAS**, the Public Finance Act of 1991, Sections 15.2-2600 et seq. of the *Code of Virginia* of 1950, as amended (the "Public Finance Act"), permits the issuance of bonds, when authorized by the Council of the City (the "Council") of Hampton, Virginia (the "City"), at one time or from time to time, in order to finance the cost of capital improvement projects and to refund bonds or notes previously issued for such purposes, and the City has previously issued general obligation bonds for such purposes; and

**WHEREAS**, the City's Financial Advisor has recommended to Council that the City may achieve debt service savings by refunding certain of its general obligation bonds or portions thereof (the "Prior Bonds") through the issuance of general obligation refunding bonds in an aggregate principal amount up to \$87,000,000 (the "Bonds"); and

**WHEREAS**, it is the consensus of the Council that the City should authorize the issuance and sale of general obligation refunding bonds in the maximum principal

amount up to \$87,000,000 to refund all or a portion of the Prior Bonds to reduce debt service, provided certain savings goals are met.

**NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF HAMPTON, VIRGINIA AS FOLLOWS:**

§ 1. **Authorization of Bonds.** The issuance of the Bonds is authorized in the maximum principal amount not to exceed \$87,000,000, subject to the limitations of paragraph 2 hereof, in order to refund in advance of their maturities all or a portion of the City's Prior Bonds, and to pay issuance and related costs of the Bonds. The Bonds shall be designated "General Obligation Public Improvement Refunding Bonds", and may also include such other term or terms as part of their designation as the officers herein authorized deem appropriate.

§ 2. **Terms of Sale; Delegation of Authority.** The Council hereby approves the following terms of the sale of the Bonds. The Bonds may be sold all at one time or at different times, in either case in one or more series, as may be determined by the Director of Finance of the City in consultation with the Financial Advisor, with the approval of the City Manager of the City.

The Bonds shall be sold upon recommendation of the Financial Advisor, at either competitive bid or negotiated sale, at such prices as the Director of Finance, with the approval of the City Manager, shall determine to be in the best interest of the City, provided (i) the true interest cost of the Bonds shall not exceed 4.0%, taking into account any original issue discount or premium, but excluding any credit enhancement premium; (ii) the sale price of the Bonds to the underwriters or other initial purchasers thereof shall not be less than 97% of the aggregate principal amount of the Bonds, not taking into account any original issue discount, (iii) the final maturity of the Bonds shall not be later than 25 years from their dated date or such lesser period as set forth from time to time in the City's general obligation bond debt policy, and (iv) any optional redemption premium shall not exceed three percent (3%) of the principal amount of the Bonds. The Director of Finance, with the approval of the City Manager, is authorized to negotiate and acquire credit enhancement for the Bonds if it is determined in the City's best interest to do so based upon the recommendation of the Financial Advisor.

The actions of the Director of Finance, with the approval of the City Manager, in selling the Bonds shall be conclusive, and no further action shall be necessary on the

part of the Council. This Resolution is intended to grant to the Director of Finance and the City Manager full and complete authority to finalize the terms of the Bonds, to provide for their issuance and sale and to execute and deliver any and all documentation in connection therewith without further approval by Council, subject to the requirements and conditions of this Resolution, the Public Finance Act, the City Charter and the Constitution and other laws of the Commonwealth of Virginia.

§ 3. **Refunding Provisions.** The Director of Finance, with the approval of the City Manager, is authorized and directed to select the principal maturities of the Prior Bonds or portions of such maturities to be refunded and to cause to be called for optional redemption any such maturity or portion thereof to be redeemed prior to its stated maturity in accordance with the provisions of such bonds; provided such maturities or portions thereof selected are expected in the aggregate to provide a minimum savings of 4.0% on a net present value basis as determined by the Financial Advisor. In connection with the refunding herein authorized, the City Manager, if determined necessary or appropriate in consultation with the Financial Advisor, is authorized to retain the services of independent consultants to provide verification reports (the "Verification Agent") on aspects of the refunding and is further authorized to retain the services of one or more escrow agents (the "Escrow Agent") and to enter into escrow agreements with them to the extent needed to hold and provide for investment of all or portions of the proceeds of the Refunding Bonds and other funds as needed pending their application to refund the Prior Bonds or portions thereof selected to be refunded.

§ 4. **Redemption and Purchase.** Subject to the following paragraph, the Bonds may be subject to redemption or purchase prior to maturity at the option of the City on or after dates, if any, determined by the Director of Finance, with the approval of the City Manager, in whole or in part at any time, at a redemption price or purchase equal to the principal amount of each bond, together with any accrued interest to the redemption or purchase date and a redemption or purchase premium, as set forth in paragraph 2 hereof, not to exceed 3% of the principal amount of such bond to be redeemed or purchased, such redemption or purchase premium to be determined by the Director of Finance, with the approval of the City Manager. Any portion of the Bonds issued as term bonds may be subject to mandatory sinking fund redemption as determined by the Director of Finance, with the approval of the City Manager.

If less than all of the Bonds are called for optional redemption or purchase, the maturities of bonds to be redeemed or purchased shall be selected by the Director of Finance in such manner as he may determine to be in the best interest of the City. If less than all the bonds of a particular maturity are called for redemption or purchase, the bonds within such maturity to be redeemed or purchased shall be selected by the Securities Depository, herein defined, for the Bonds, if any, pursuant to its rules and procedures or, if the book-entry system is not in effect, shall be selected by the Registrar, herein defined, by lot in such manner as the Registrar in its discretion may determine. In either case, (a) the portion of any bond to be redeemed or purchased shall be in the principal amount of \$5,000, or an integral multiple thereof, and (b) in selecting bonds for redemption or purchase, each bond shall be considered as representing that number of bonds that is obtained by dividing the principal amount of such bond by \$5,000. The City shall cause notice of the call for redemption identifying the bonds or portions thereof to be redeemed to be sent by facsimile transmission, registered or certified mail or overnight express delivery, not less than 30 nor more than 60 days prior to the redemption date, to the Securities Depository for the bonds or its nominee as the registered owner thereof, or, if the book-entry system is not in effect, to the persons shown on the registration books of the Registrar to be the registered owners of the bonds. If a portion of a bond is called for redemption, a new bond in principal amount of the unredeemed portion thereof shall be issued to the registered owner upon surrender thereof.

If the book-entry system is in effect, the City shall not be responsible for giving notice of redemption to anyone other than the Securities Depository for the bonds or its nominee. If a portion of a bond is called for redemption, a new bond in principal amount equal to the unredeemed portion thereof shall be issued to the registered owner upon the surrender thereof.

§ 5. **Bond Details.** The Bonds shall be in registered form and shall be designated by title, date and series, bear interest from the date, be payable on the payment dates, and mature at such time or times not exceeding 25 years from their date and in amounts as either serial or term bonds, or both, with sinking fund payments, if any, all as determined by the Director of Finance, with the approval of the City Manager.

Each bond shall be issued in the denomination of \$5,000 or any integral multiple thereof and shall bear interest at such rate as shall be determined at the time of sale, calculated on the basis of a 360-day year and a 30-day month, payable semiannually as

determined by the Director of Finance, with the approval of the City Manager, subject to the terms of this Resolution (defined below).

Principal and premium, if any, shall be payable to the registered owners upon surrender of bonds as they become due at the office of the Registrar. Interest shall be payable by check or draft mailed to the registered owners at their addresses as they appear on the registration books kept by the Registrar on the date prior to each interest payment date that shall be determined by the Director of Finance, with the approval of the City Manager (the "Record Date"); provided however, any Record Date contained in the bond certificate shall be deemed the determination of such officers. Principal, premium, if any, and interest shall be payable in lawful money of the United States of America.

Initially, one Bond certificate for each maturity of the Bonds shall be issued to and registered in the name of The Depository Trust Company, New York, New York ("DTC"), or its nominee. The City has heretofore entered into a Blanket Issuer Letter of Representations relating to a book-entry system to be maintained by DTC with respect to the Bonds. "Securities Depository" shall mean DTC or any other securities depository for the Bonds appointed pursuant to this Section.

In the event that (a) the Securities Depository determines not to continue to act as the securities depository for the Bonds by giving notice to the Registrar, and the City discharges its responsibilities hereunder, or (b) the City, in its sole discretion, determines (i) that beneficial owners of Bonds shall be able to obtain certificated Bonds or (ii) to select a new Securities Depository, then the City's Director of Finance shall, at the direction of the City, attempt to locate another qualified securities depository to serve as Securities Depository and authenticate and deliver certificated Bonds to the new Securities Depository or its nominee, or authenticate and deliver certificated Bonds to the beneficial owners or to the Securities Depository participants on behalf of beneficial owners. In delivering certificated Bonds, the City's Director of Finance shall be entitled to rely on the records of the Securities Depository as to the beneficial owners or the records of the Securities Depository participants acting on behalf of beneficial owners. Such certificated Bonds will then be registrable, transferable and exchangeable as set forth herein.

So long as there is a Securities Depository for the Bonds, (1) it or its nominee shall be the registered owner of the Bonds, (2) notwithstanding anything to the contrary in this Resolution, determinations of persons entitled to payment of principal, premium, if

any, and interest, transfers of ownership and exchanges, and receipt of notices shall be the responsibility of the Securities Depository and shall be effected pursuant to rules and procedures established by such Securities Depository, (3) the Registrar and the City shall not be responsible or liable for maintaining, supervising or reviewing the records maintained by the Securities Depository, its participants or persons acting through such participants, (4) references in this Resolution to registered owners of the Bonds shall mean such Securities Depository or its nominee and shall not mean the beneficial owners of the Bonds, and (5) in the event of any inconsistency between the provisions of this Resolution and the provisions of the above-referenced Blanket Issuer Letter of Representations, such provisions of the Blanket Issuer Letter of Representations, except to the extent set forth in this paragraph and the immediately preceding paragraph, shall control.

§ 6. **Preparation, Execution and Delivery of Bonds.** The City Manager, the Director of Finance and the City Clerk are authorized and directed to take all proper steps to have the Bonds prepared and executed in accordance with their terms and to deliver the Bonds to or for the account of the purchasers thereof upon payment therefor. The Bonds shall be signed by the manual or facsimile signatures of the City Manager or the Director of Finance, and the City's seal shall be affixed thereto or a facsimile thereof printed thereon and attested by the manual or facsimile signature of the City Clerk. The Bonds may also be signed by the Mayor of the City. No bond signed by facsimile signatures shall be valid until it has been authenticated by the manual signature of an authorized officer or employee of the Registrar and the date of authentication noted thereon.

§ 7. **Form of Bonds.** The Bonds shall be in the form or forms as the Director of Finance may select, with such terms and provisions not inconsistent with this Resolution as may be approved by the officers signing the Bonds, whose approval shall be evidenced conclusively by the execution and delivery thereof.

§ 8. **Pledge of Full Faith and Credit.** The power and obligation of the City to pay principal of, premium, if any, and interest on the Bonds shall be unlimited and the City shall levy and collect ad valorem taxes upon all taxable property within the City, without limitation as to rate or amount, sufficient to pay the principal of, premium, if any, and interest on the Bonds to the extent other funds of the City are not sufficient or available for such purpose. The full faith and credit of the City are pledged for the payment of principal of, premium, if any, and interest on the Bonds.



§ 9. **Duties of Registrar.** The Registrar shall be selected by the Director of Finance, with the approval of the City Manager. The Registrar shall maintain registration books for the registration of the Bonds. Upon surrender of any bond to the Registrar, together with an assignment duly executed by the registered owner or his duly authorized attorney or legal representative in such form as shall be satisfactory to the Registrar, the City shall execute, and the Registrar shall authenticate and deliver in exchange, a new bond or bonds having an equal aggregate principal amount, in authorized denominations, of the same form and maturity, bearing interest at the same rate, and registered in names as requested by the then registered owner or his duly authorized attorney or legal representative. Any such exchange shall be at the expense of the City, except that the Registrar may charge the person requesting such exchange the amount of any tax or other governmental charge required to be paid with respect thereto.

The Registrar shall treat the registered owner as the person exclusively entitled to payment of principal, premium, if any, and interest and the exercise of all other rights and powers of the owner, except that interest payments shall be made to the person shown as owner on the registration books as of the Record Date.

§ 10. **Legal Debt Limit.** The Council has ascertained and hereby determines and states that the maximum principal amount of the Bonds authorized by this Resolution and all other outstanding general obligation bonds or other general obligation indebtedness heretofore issued or contracted by the City for any purpose, or in any manner, does not exceed 10% of the assessed valuation of the real estate in the City subject to taxation, as shown by the last preceding assessment for taxes, and that, accordingly, the Bonds are within the limitation of indebtedness as provided in Section 6.16 of the City Charter, Section 15.2-2634 of the Public Finance Act and Article VII, Section 10 of the Virginia Constitution.

§ 11. **Offering Documents.** The City Manager and the Director of Finance are authorized and directed to have prepared and distributed, in accordance with standard practices of municipal securities, one or more Preliminary Official Statements of the City describing the Bonds as authorized herein, the security therefor, and providing any other pertinent or relevant information. The Director of Finance shall make such completions, omissions, insertions and changes in such Preliminary Official Statement not inconsistent with this Resolution as are necessary or desirable to complete it as a final Official Statement. The City shall arrange for the delivery to the purchasers of the Bonds

of a reasonable number of copies of the final Official Statement, within seven business days after the date the Bonds have been awarded, for delivery to each potential investor requesting a copy of the final Official Statement and to each person to whom any underwriter or bidder and members of the underwriting or bidding group initially sell Bonds.

§ 12. **Offering Document Determination.** The Director of Finance is authorized, on behalf of the City, to deem such Preliminary Official Statement and such Official Statement in final form, each to be final as of its date within the meaning of Rule 15c2-12 (the "Rule") of the Securities and Exchange Commission (the "SEC"), except for the omission in such Preliminary Official Statement of certain pricing and other information allowed to be omitted pursuant to the Rule. The distribution of such Preliminary Official Statement and such Official Statement in final form shall be conclusive evidence that each has been deemed final as of its date by the City, except for the omission in such Preliminary Official Statement of such pricing and other information.

§ 13. **Tax Compliance Undertakings.**

(a) The City covenants that it shall not take or omit to take any action the taking or omission of which will cause the Bonds issued as tax-exempt obligations to be "arbitrage bonds" within the meaning of Section 148 of the Internal Revenue Code of 1986, as amended, including regulations issued pursuant thereto (the "Code"), or otherwise cause interest on the Bonds issued as tax-exempt obligations to be includable in the gross income for federal income tax purposes of the registered owners thereof under existing law. Without limiting the generality of the foregoing, the City shall comply with any provision of law that may require the City at any time to rebate to the United States any part of the earnings derived from the investment of the gross proceeds of the Bonds, unless the City receives an opinion of nationally recognized bond counsel that such compliance is not required to prevent interest on the Bonds issued as tax-exempt obligations from being includable in the gross income for federal income tax purposes of the registered owners thereof under existing law. The City shall pay any such required rebate from its legally available funds.

(b) Such officers of the City as may be requested are authorized and directed to execute appropriate certificates setting forth facts and covenants related to the expected use and investment of the proceeds of the Bonds issued as tax-exempt obligations in order to show that such expected use and investment will not violate the

provisions of Section 148 of the Code and any elections such officers deem desirable regarding rebate of earnings to the United States for purposes of complying with Section 148 of the Code. Such certificates, covenants and elections shall be in such form as may be requested by bond counsel for the City.

(c) The City covenants that it shall not permit the proceeds of the Bonds issued as tax-exempt obligations or the facilities financed with the proceeds of such Bonds to be used in any manner that would result in (a) 10% or more of such proceeds or the facilities financed with such proceeds being used in a trade or business carried on by any person other than a governmental unit or 5% or more of such proceeds or facilities financed with such proceeds being used for such purpose where such use is unrelated or disproportionate to the governmental use of such proceeds, as provided in Section 141(b) of the Code (b) 5% or more of such proceeds or the facilities financed with such proceeds being used with respect to any output facility (other than a facility for the furnishing of water), within the meaning of Section 141(b)(4) of the Code, or (c) 5% or more of such proceeds being used directly or indirectly to make or finance loans to any person other than a governmental unit, as provided in Section 141(c) of the Code; provided, however, that if the City receives an opinion of nationally recognized bond counsel that any such covenants need not be complied with to prevent the interest on the Bonds issued as tax-exempt obligations from being includable in the gross income for federal income tax purposes of the registered owners thereof under existing law, the City need not comply with such covenants.

§ 14. **Post-Issuance Tax Compliance.** Upon the advice of the City's Bond Counsel, the City has determined that it is advantageous and in the best interests of the City and the owners of the Bonds issued as tax-exempt obligations and other tax-exempt bonds and taxable direct-payment subsidy bonds (collectively, "Tax-Advantaged Bonds"), to establish certain post-issuance compliance policies and procedures (the "Post-Issuance Compliance Policies and Procedures") in order to demonstrate compliance with recent guidelines recommended by the Internal Revenue Service ("IRS") and related changes made by the IRS to its information reporting forms for Tax-Advantaged Bonds requiring bond issuers to indicate whether they have established written procedures for monitoring and tracking the use and investment of proceeds of Tax-Advantaged Bonds, and for monitoring the use of the projects financed with the proceeds of such bonds. City Council desires that the City have in place written Post-Issuance Compliance Policies and Procedures to comply with IRS guidelines, and directs the City Manager in consultation

with the Director of Finance and the City's Bond Counsel to establish and adopt such written policies and procedures to monitor compliance issues related to the Bonds and all other Tax Advantaged Bonds previously issued and to be issued by the City. The Post Issuance Policies and Procedures shall be administered by the Director of Finance and such other officers and staff as the Director of Finance may designate and authorize for such purpose. Such policies and procedures may be modified or amended from time to time as the City Manager and Director of Finance determine appropriate; provided any modification or amendment thereto is in compliance with then current IRS requirements and guidelines.

§ 15. **Continuing Disclosure Undertakings.** The City desires to assist the purchasers of the Bonds in complying with the provisions of Section (b)(5)(i) of the Rule. In order to accomplish this, the City covenants to do the following to the extent required or requested:

(A) Annual Disclosure.

(1) The City shall provide annually certain financial information and operating data in accordance with the provisions of Section (b)(5)(i) of the Rule, as follows:

(a) audited financial statements, prepared in accordance with generally accepted accounting principles; and

(b) the operating data with respect to the City of the type appearing in portions of the Official Statement in final form under the headings "Authorization of Debt", "General Obligation Bonded Debt", "Certain Debt Ratios", "General Governmental Revenues" and "General Governmental Expenditures".

(2) The City shall annually provide the financial information and operating data described in subsection (1) above (the "Continuing Disclosure") within 180 days after the end of the City's fiscal year, commencing with the City's fiscal year in which the Bonds are issued, to the Municipal Securities Rulemaking Board ("MSRB") through its Electronic Municipal Market Access System or such other system as the MSRB may designate for such purpose.

(3) Any of the Continuing Disclosure may be included by specific reference to other documents previously provided to the MSRB or filed with the SEC; provided, however, that any final official statement incorporated by reference must be available from the MSRB.

(4) The City shall provide in a timely manner to the MSRB notice specifying any failure of the City to provide the Continuing Disclosure by the date specified.

If the City fails to comply with any covenant or obligation specified in this Section, any holder (within the meaning of the Rule) of the Bonds then outstanding may, by notice to the City, proceed to protect and enforce its rights and the rights of the holders by an action for specific performance of the City's covenant to provide financial information and operating data.

(B) Event Disclosure. The City shall provide notice in a timely manner to the MSRB of the occurrence of any of the following events with respect to the Bonds , such notice to be provided not more than ten business days after the occurrence of the event:

- (1) principal and interest payment delinquencies;
- (2) non-payment related defaults, if material;
- (3) unscheduled draws on debt service reserves reflecting financial difficulties;
- (4) unscheduled draws on credit enhancement reflecting financial difficulties;
- (5) substitution of credit or liquidity providers, or their failure to perform;
- (6) adverse tax opinions, the issuance by the Internal Revenue Service of proposed or final determinations of taxability, Notices of Proposed Issue (IRS Form 5701-TEB) or other material notices or determinations with respect to the tax status of the Bonds, or other material events affecting the tax status of the Bonds;
- (7) modifications to rights of Bond holders, if material;
- (8) bond calls, if material, and tender offers;
- (9) defeasances;
- (10) release, substitution, or sale of property securing repayment of the Bonds, if material;
- (11) rating changes;
- (12) bankruptcy, insolvency, receivership or similar event of the City;
- (13) the consummation of a merger, consolidation or acquisition involving the City or sale of all or substantially all of the assets of the City, other than in the ordinary course of business, the entry

into a definitive agreement to undertake such an action or the termination of a definitive agreement relating to any such actions, other than pursuant to its terms, if material; and

- (14) appointment of a successor or additional trustee or the change of name of a trustee, if material.

(C) Termination. The covenants and obligations of the City specified in subsections (A) and (B) to the extent they apply shall terminate upon the redemption, defeasance (within the meaning of the Rule) or payment in full of all the Bonds.

(D) Amendment. The City reserves the right to modify its obligations specified in subsections (A) and (B) without the consent of bondholders, provided that such modification complies with the Rule as it exists at the time of modification. The City shall, within a reasonable time thereafter, send to the MSRB, a description of such modification(s).

(E) Additional Disclosure. The City may from time to time disclose certain information and data in addition to the Continuing Disclosure. Notwithstanding anything herein to the contrary, the City shall not incur any obligation to continue to provide, or to update, such additional information or data.

§ 16. **Filing of Resolution.** The City Clerk, with the assistance of the City Attorney, is authorized and directed to see to the immediate filing of a certified copy of this Resolution in the Circuit Court of the City of Hampton and is directed to make a copy of this Resolution continuously available for inspection by the general public during normal business hours at the City Clerk's office from the date of adoption hereof through the date of the issuance of the Bonds.

§ 17. **Confirmation and General Authorization.** All other actions of officers of the City in conformity with the purposes and intent of this Resolution and in furtherance of the issuance and sale of the Bonds are approved and confirmed. The officers of the City are authorized and directed to execute and deliver all certificates and instruments and to take all such further action as may be considered necessary or desirable in connection with the issuance, sale and delivery of the Bonds, including entering into contracts and arrangements for the purchase of the Bonds in connection with a negotiated sale with one or more underwriters, to provide credit enhancement or insurance for all or a portion of the Bonds, to provide for the investment of the proceeds of the Bonds.

§ 18. **Effective Date.** This Resolution shall be in force and effect upon adoption.

Ms. Bunting introduced the item stating we work with our financial advisors to identify savings in our outstanding bonds in an attempt to save money and minimize the number of times we go to the public for additional fees and/or tax increases. We are in a low interest rate environment due to economic conditions, and in the past several months, Council has approved refinancing of bonds. Our financial advisors have identified another series of bonds eligible for refinancing assuming the interest rate market holds. These bond refinancings will not increase the maturity dates and have several triggers as to the maximum rate at which we will issue as well as require a certain net present value of savings so we don't incur costs to refinance without getting the benefit. We are currently projecting, on the bonds identified, that if the market conditions hold, we could save \$2.6 million on a net present value basis or 6.98% of the refunded principal. On a cash flow basis, we could expect that service savings to begin at \$350,000 per year in FY13 and FY14 and continue at various levels beyond that. Having a cash flow savings every year moving forward is important. We have bonds to issue soon for a variety of projects. That debt service savings will help mitigate the impact of the debt service increase on our budgets in FY13 and FY14. Public Financial Management (PFM) financial advisors, our bond counsel and our Finance Director are in attendance should Council have questions regarding tax implications or structures of the bonds. This is good news for our citizens and the community.

Councilman Stuart commented that this is a proactive effort on the part of the City government to save the citizens money. There is no reward at the end of the day if you pay more to a bond fund.

**APPROVED**

**Motion made by:** Councilmember Ross A. Kearney, II

**Seconded by:** Councilmember Donnie R. Tuck

**Ayes:** 7 - Ross A. Kearney, II, Will Moffett, Joseph H. Spencer, II, Christopher G. Stuart, Donnie R. Tuck, George E. Wallace, Molly Joseph Ward

**Nays:** 0

**APPOINTMENTS**

33. 12-0117 to consider nominations to the Virginia Municipal League 2012 Policy Committees

APPOINTED the following individuals to the Virginia Municipal League 2012 policy committees:

Community and Economic Development - Councilman Will Moffett

Environmental Quality - W. H. "Billy" Hobbs, Jr.

Finance - Councilman Christopher G. Stuart

General Laws - Vice Mayor George E. Wallace

Human Development and Education - Chris Sneed

Transportation - Councilman Donnie R. Tuck

**Motion made by:** Councilmember Ross A. Kearney, II

**Ayes:** 7 - Ross A. Kearney, II, Will Moffett, Joseph H. Spencer, II,  
Christopher G. Stuart, Donnie R. Tuck, George E. Wallace, Molly  
Joseph Ward

**Nays:** 0

34. 12-0161 to consider appointments to the Neighborhood Commission

APPOINTED Anthony White, II and Ryan Jones as youth representatives  
and Anthony Reyes as the City Representative in the place of  
Lynn Allsbrook, all of these terms will begin on May 31, 2012 and  
end on September 30, 2012.

**Motion made by:** Councilmember Ross A. Kearney, II

**Ayes:** 7 - Ross A. Kearney, II, Will Moffett, Joseph H. Spencer, II,  
Christopher G. Stuart, Donnie R. Tuck, George E. Wallace, Molly  
Joseph Ward

**Nays:** 0

#### **REPORTS BY CITY MANAGER, CITY COUNCIL, STAFF, COMMITTEES**

Ms. Bunting thanked the citizens for their input during the budget process because the  
citizen input process has helped navigate difficult times over the last several years.

#### **MISCELLANEOUS NEW BUSINESS**

There were no new business items discussed.

#### **ADJOURNMENT**

\_\_\_\_\_  
Molly Joseph Ward  
Mayor

\_\_\_\_\_  
Katherine K. Glass, CMC  
Clerk of Council

Date approved by Council \_\_\_\_\_